

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

..... X
RAFAEL BLASINI,

11 CV 3022 (SAS)

Plaintiff,

DECLARATION

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, DETECTIVE JEREMIAH
BREEN, and JOHN DOE POLICE OFFICERS AND/OR
DETECTIVES #s 1-10,

Defendants.

..... X

ERIC E. ROTHSTEIN, an attorney duly admitted to practice in the Courts of the State of New York, and a member of ROTHSTEIN LAW PLLC, attorneys for plaintiff, RAFAEL BLASINI, makes the following statements, upon information and belief, under penalties of perjury; said statements being based on papers contained in the file maintained by plaintiff's aforesaid attorneys.

1. I am an attorney duly admitted to practice in the Courts of the State of New York and the United States District Court for the Southern District of New York. I am a member of ROTHSTEIN LAW PLLC, attorneys for plaintiff, RAFAEL BLASINI.

2. I submit this Declaration in response to the Court's *sua sponte* Order To Show Cause dated April 2, 2012. See Docket 30.

3. In *Rehberg v. Paulk*, No. 10-788, the United States Supreme Court held that a grand jury witness enjoys absolute immunity for his testimony, even if perjured, and that evidence that said testimony was perjured cannot be introduced to "... support any other §1983 claim concerning the initiation or maintenance of a prosecution."

4. At least one court, relying on *Rehberg*, has held that "[a] grand jury indictment is prima facie evidence of probable cause. Absolute immunity prohibits Jones from rebutting this presumption with

evidence that Porter made misrepresentations to the grand jury. Accordingly, the Motion will be granted on these two claims.” *Jones v. Dalton*, No. 09-138, (D. New Jersey, April 3, 2012).

5. However, *Rehberg*, by its terms, applies only to actions arising under 42 U. S. C. §1983. Thus, to the extent that the Court finds that plaintiff’s federal claims are no longer viable (something he does not concede because he does not want any such concession to be viewed as a voluntary discontinuance under CPLR § 205[(a)], *Rehberg* does not impact his state claims.

6. Accordingly, rather than dismiss the case, this Court should exercise its supplemental jurisdiction over the state claims.¹

Dated: New York, New York
April 13, 2012

ROTHSTEIN LAW PLLC

/s/ *Eric E. Rothstein*
Eric E. Rothstein
Attorneys for Plaintiff
11 Park Place – Suite 1801
New York, New York 10007
(212) 385-8015

¹ If the Court elects not to exercise supplemental jurisdiction, plaintiff will have six (6) months following the dismissal to re-file his state claims in State court. CPLR § 205(a).

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2012, a copy of the foregoing Declaration was filed electronically and served by mail on anyone unable to accept electronic filing, including the New York County District Attorney's Office. Notice of this filing is being sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: New York, New York
April 13, 2012

ROTHSTEIN LAW PLLC

/s/ *Eric E. Rothstein*
Eric E. Rothstein
Attorneys for Plaintiff
11 Park Place – Suite 1801
New York, New York 10007
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-against-

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OFFICERS AND/OR DETECTIVES #s 1-10,

Defendants.

DECLARATION

ROTHSTEIN LAW PLLC
Attorneys for **Plaintiff**
11 Park Place, Suite 1801
New York, New York 10007
212-385-8015

CERTIFICATION BY ATTORNEY:

The undersigned, an attorney duly admitted to practice in the Courts of the State of New York, shows:

I certify that, to the best of my knowledge, information and belief formed after an inquiry reasonable under the circumstance, the presentation of the paper(s) listed above or contention(s) herein are not frivolous as defined in §130-1.1(c).

Eric E. Rothstein